

## **Meeting Summary – DNR Clean Air Act Task Force**

### **Friday, October 8, 1999 – Madison, WI**

**Participants:** Keith Reopelle, Wisconsin's Environmental Decade; Peter Beitzle, Metropolitan Milwaukee Association of Commerce; W.J. Blaedel, retired professor of chemistry, UW-Madison; Hank Handzel, DeWitt Ross & Stevens (for Printing Industries of Wisconsin and Wisconsin Paper Council); Ed Wilusz, Wisconsin Paper Council; Patrick Stevens, Wisconsin Manufacturers & Commerce; Ken Yunker, Southeast Wisconsin Regional Planning Commission; Kris McKinney, Wisconsin Electric; Tom Walker, Wisconsin Transportation Builders Association; Bob Fassbender, Hough Fassbender Osborne & Associates; Nick George, Wisconsin Utilities Association; Karen Schapiro, Frazer Schapiro & Rich; Larry Fox, Fox Environmental Services Inc.; Jim Beasom, Appleton Papers Inc.; Michael Allen, Stafford Rosenbaum Rieser & Hanson; Michael Ricciardi and Susan Rosenberg, Madison Gas & Electric; John Stolzenberg, Legislative Council staff; Greg Eirschele, Applied Environmental Sciences; Martin David, UW-Madison; Kathleen Standen, Alliant Energy; Elizabeth Hartman, Quarles & Brady LLP; Richard Osa, STS Consultants Ltd.; Doug Aburano and Michael Leslie, USEPA Region 5; Doug Riemer, Office of the Governor; Phillip Jack Annis, UW-Extension; Marc Bentley, Wisconsin Motor Carriers Association; Erin Roth, Wisconsin Petroleum Council; Tom Frank, Federal Highway Administration; Tad Ottman, Senator Panzer's office; Bob Elvert, Mobil Oil Corp.; Lou Skibicki, RTP Environmental Associates; Harold Frank, Dairyland Power Cooperative; David Donovan, Northern States Power Co.; David Worzal and Kendra Bonderud, Legislative Fiscal Bureau; Steven Vogt, Badger Meter Inc.; Sally Jenkins and Pat McCormack, Wisconsin Public Service Commission; Hampton Rothwell and Pam Christenson, Department of Commerce; Neil Howell, Preston Schutt Department of Administration; Joe Conduah, Patricia Trainer, Steve Hirschfeld and Dennis Presser, Wisconsin Department of Transportation; Lloyd Eagan, Bob Lopez, Jerry Medinger, Eric Mosher, Anne Bogar, Caroline Garber, Larry Bruss and Anne Urbanski, WDNR Air Management Program.

**Overheads:** (Bruss) Annual number of site-day exceedances (at) 1 hr and 8 hr ozone monitoring sites. (Lopez) Ozone Attainment Planning (12 slides). **Handouts:** (Blaedel) Document 2623 -- "Ozone: An Unstable Minor Pollutant (An attempt to debunk DNR's ozone gobbledygook)," originally presented to the Natural Resources Board in 1995; Documents 2768 and 2788 -- copies of lawsuits filed by Walter J. Blaedel against the state of Wisconsin (specifically certain DNR staff, the Natural Resources Board, the DNR, the Clean Air Act Task Force, and the Toxics Committee of the DNR Clean Air Act Task Force).

**Next 2 meetings:** Friday, November 19, 1999 and Friday, December 10, 1999, both from 9:30 a.m. to noon in the ground floor conference room at the WHEDA Building, 201 W. Washington Ave., Madison. ***Please note: the December 10 meeting may need to be rescheduled at a later date, depending on the progress of modeling activities.***

### **Discussion**

**Review and approve June 7 meeting summary:** Walter Blaedel said the summary did not include a roll call of attendees, nor review and approval and approval of the previous meeting's agenda and "minutes," which, he said, constituted false swearing. Lloyd Eagan noted the meeting did not include the "omitted" items, so no record could be made of what did not happen. Blaedel objected to "undefined terms" and other things he called "falsifications." Eagan suggested he write up a list of his concerns and submit them to notetaker Anne Urbanski.

**Review and adjust today's agenda:** Eagan outlined some revisions to the original agenda. Blaedel said "roll call" had been left off; Eagan replied that ordinarily "roll" is not called in meetings of this advisory group.

**Summary of 1999 ozone season:** Larry Bruss noted that the data he was presenting was preliminary or "draft," as it had not yet been quality assured. Had the new 8-hour ozone standard been in place in 1988, Wisconsin would have had 537 exceedance days (number of days above the health standard times number of sites above the standard) in addition to a documented 150 exceedance days for the 1-hour ozone standard; in 1999, the number of exceedances days dropped to 184 for the 8-hour standard and 9 for the 1-hour standard. In 1988, we saw peak 1-hour concentrations above 200 parts per billion, whereas in recent years the 1-hour peak has been around 140 ppb. This shows Wisconsin's program for controlling emissions of volatile organic compounds (VOCs) has worked well, but we haven't yet really dealt with the other main ozone precursor, nitrogen oxides. EPA's 22-state plan for reducing NOx emissions (the "NOx SIP call") would have helped us reduce those emissions enough to bring down ozone concentrations below both the 1-hour and 8-hour ozone standards. It's apparent we need regional NOx reductions to achieve these goals. Bruss noted that all Wisconsin counties along Lake Michigan appear to have problems meeting the 8-hour ozone standard, as well as several inland counties that have not had problems with the

1-hour standard. On May 30, 1999, every ozone monitor in the state recorded 8-hour ozone readings above 85 ppb. For the attainment demonstration that Wisconsin must submit to EPA in late 2000, we need to be concerned about reducing 1-hour ozone levels at Chiwaukee Prairie and Harrington Beach below 125 ppb; this might require a combination of regional plus local control measures for NOx. Ken Yunker requested an attachment to the meeting summary – a copy of Bruss' overhead on ozone monitoring sites in Wisconsin that EPA might designate as violating the 8-hour ozone standard based on 1997-99 ozone data (this was provided to meeting attendees before the meeting concluded).

Tom Walker asked how DNR might determine how much of each county's ozone problem was generated locally versus how much was transported in on air currents from other areas. Bruss said a new modeling tool called CAM-X could help the DNR determine where the pollutants are coming from, both in terms of geographic area and industrial and other sources. The DNR plans to use CAM-X, in conjunction with modeling being conducted by the Lake Michigan Air Directors Consortium (LADCO) to help convince upwind states that they need to reduce their ozone-forming emissions that end up over Wisconsin. DNR anticipates interstate negotiations, as well as a smaller regional approach to emission reductions than under the NOx SIP call. Bruss said EPA is required in spring 2000 to designate counties not meeting the 8-hour ozone standard. He believes that, as was done with the 1-hour standard, EPA will designate full Consolidated Metropolitan Statistical Areas rather than individual counties. The number of site days above the 8-hour standard depends a lot on the weather; hot summers (1989, 1991, 1995 and 1999) averaged roughly 200 exceedance-days, whereas average summers had around 80-90 exceedance-days. Bruss said that controls on volatile organic compound emissions have led to significant decreases in 1-hour exceedance days. Slightly increased NOx emissions plus large scale biogenic VOC emissions have led to a huge pool of ozone over the eastern United States, so we are facing not just ozone transport, but a problem of ubiquitous, high 8-hour ozone levels. As a public health issue, DNR needs to work on raising public awareness of these persistently high ozone levels, as surveys indicate Wisconsin residents think the state's air quality is "okay" even in southeastern Wisconsin. Blaedel interrupted Bruss with complaints about the content of the presentation, and Eagan said he was out of order. Blaedel said he would leave the meeting; he handed out copies of the presentation he was scheduled to make at the end of the meeting.

**DNR's mercury reduction proposal:** -- Caroline Garber said mercury is a health concern, especially for people, such as native Americans and southeast Asian immigrants, who eat a lot of fish caught from Wisconsin waterbodies. During 1999 the DNR has met several times with stakeholder groups to develop a "white paper" on cost-effective ways to control mercury emissions. The strategy put forth in the white paper has four basic components: 1) a market approach, including a cap on emissions, trading and banking; 2) establishment of a mercury reduction fund; 3) regional Total Maximum Daily Loads (TMDLs) for mercury deposition to waterbodies; and 4) a regional approach to solving the problem of mercury deposition. The cap-and-trade program would allow limited trading between the electric power generating sector and the manufacturing sector. DNR is cooperating with USEPA on a TMDL study at Devils Lake, one of only two such projects in the nation, to develop the science of studying atmospheric deposition of mercury. Secretary Meyer advocates regional and national solutions to the mercury problem, with Wisconsin taking a leading role. A bill in the state legislature, SB 177, would require utilities, solid waste incinerators and chlor-alkali plants to reduce their emissions 50% from a 1999 baseline by 2015; it would also require DNR to include fish consumption advisories with each fishing license and impose an environmental assessment fee on utilities. Garber noted that, compared with non-acidic lakes, acidic lakes tend to be much more susceptible to converting airborne mercury deposits into methylmercury. Also, the reason that only 300 Wisconsin lakes have mercury advisories is that thus far the DNR has been able to test only one-third of the state's lakes for mercury deposition; each year that testing has been done, one-third of the lakes tested have been positive for mercury. There was some discussion in the group as to whether any current technologies are able to reduce mercury emissions from coal to the levels envisioned in SB 177. Other discussion focused on how much the white paper proposal and SB 177 might cost, how they might affect beneficial industries such as coal-ash recycling, and the fact that this is the only water quality problem for which Wisconsin does not yet have an effective regulatory approach, due to being a cross-media issue.

**Proposed revisions to ch. NR 445, hazardous air pollutants rule:** Garber said the DNR held a first meeting with stakeholders in June 1999 and since then has been working on setting up a Toxics Technical Advisory Group (Toxics TAG) to review criteria for listing chemicals and setting de minimus levels. It is hoped that once the Toxics TAG does meet, they will develop a straw proposal much different than the initial proposal in June. Staff are

developing an Excel spreadsheet for Toxics TAG members and other interested parties to use in determining how rule changes might affect their industries or chemicals of interest. The first Toxics TAG meeting probably will be held in December 1999 or January 2000. In addition to examining which chemicals to regulate, the Toxics TAG will also examine compliance schedules and demonstrations, possible impacts on emission inventory reporting, and implementation issues, as well as attempting to make the rule much easier to read and to use.

**Greenhouse gases** – Garber said legislation is being drafted to establish a voluntary system to register Wisconsin emitters' early reductions of greenhouse gases and other air pollutants such as mercury and fine particulates. This registry will provide Wisconsin companies with a record of voluntary emission reductions made prior to any that might eventually be required by the federal government, so that companies who acted early can get credit for those actions. The bill draft is in the early stages; either Sen. Brian Burke or Sen. Alice Clausing will probably introduce the bill, with Sen. Rob Cowles as a co-sponsor.

**Update on "NOx SIP call" and 22-state NOx control negotiations** -- Lloyd Eagan outlined recent developments concerning the "NOx SIP call," EPA's plan to reduce nitrogen oxide emissions across the eastern United States. The district court in Washington, DC, has granted an indefinite stay of the NOx SIP call; this means that EPA's September 30, 1999 deadline for submission of State Implementation Plans is now delayed until May 1, 2000 at the earliest. EPA has looked at the petitions already submitted by several northeastern states to try to force upwind states to reduce their NOx emissions based on section 126 of the Clean Air Act Amendments of 1990. EPA has determined that the agency cannot enforce those petitions based on the 8-hour ozone standard. So it has divided the section 126 petitions into two groups: those based solely on the 1-hour ozone standard will move forward, while the others are "on hold." Wisconsin may file a section 126 petition if upwind states fail to cooperate on necessary ozone emission reductions.

While the stay disrupts Wisconsin's ozone planning process, Eagan noted, it does nothing to stop the December 2000 deadline for submitting one-hour attainment demonstrations. As a result Wisconsin will need to find different mechanisms, unrelated to reducing ozone transport, to get the last bit of reductions needed to demonstrate future attainment in the nonattainment counties. DNR Secretary Meyer and others have participated in several multistate discussions on how to achieve the NOx SIP call's proposed reductions without the mechanism of the SIP call. The talks fell apart when several groupings of states and EPA could not reach a consensus on emission rates. Wisconsin is now considering developing its own agreement with a group of states including Tennessee, Indiana, Kentucky, Illinois, Missouri and Iowa, to cooperate in sharing modeling information and pursuing a potential solution. The group of states hopes to complete most of its modeling work this year.

**Planning for the one-hour ozone standard attainment demonstration** -- Bob Lopez said Wisconsin was pretty far along the NOx SIP call path in May 1999 when the Circuit Court of the District of Columbia decided to remand the eight-hour standard to EPA. Now we have to show, by December 2000, how Wisconsin plans to attain the one-hour ozone standard by 2007 (our scheduled attainment date) without benefit of the emission reductions sought by the NOx SIP call. We must submit a comprehensive, enforceable plan that shows that, by 2005, controls will be in place that will result in attainment of the one-hour ozone standard by 2007. In reality, however, Wisconsin has to meet the ozone standard by 2005. Without the NOx SIP call mechanisms, we face several major uncertainties, including the possibility of some areas being reverted to nonattainment status because there's no other enforceable ozone standard, states' uncertainty about counting on emission reductions from the proposed "Tier 2" fuel standards in developing their SIPs, and the precarious status of both NOx SIP call and the 8-hour ozone standard.

Due to the recent court actions on the NOx SIP call and the 8-hour ozone standard, EPA wants states to submit "corrections" to the "Phase 2" attainment demonstrations they submitted in April 1998. DNR doesn't agree with EPA's idea that statewide NOx controls will be necessary to meet the one-hour ozone standard. EPA is requiring states to submit a mobile source emissions budget to support the Phase 2 attainment demonstration. Tom Walker noted that a few years ago, when the DNR presented its plan for the 1998 submittal to the Clean Air Act Task Force, certain backup or contingency provisions in the plan did not seem "a big deal." Lopez replied that at that time, the DNR believed that the NOx SIP call would generate the necessary emission reductions without the need to invoke any of these contingencies. Walker said there should be a mechanism for stakeholders to provide input to the DNR and the Natural Resources Board on provisions that now appear to be more important than they did two years ago; Eagan replied that DNR has provided and will continue to provide mechanisms for input.

Lopez said that the pieces of Wisconsin's submittal to demonstrate attainment of the one-hour ozone standard (a.k.a. "*the one-hour attainment demonstration*," due to EPA in December 2000) need to be agreed to by sometime in February 2000. The demonstration: (1) must include modeling that demonstrates attainment by no later than 2007 (which means control measures must be in place by 2005 in order to ensure attainment by 2007); (2) must specify additional pollutant reductions of 9% by 2002 and another 9% by 2005, and whatever else is necessary for attainment by 2007; (3) must show that the state will adopt all Clean Air Act-required elements by December 2000; and (4) must show that Wisconsin emissions do not negatively impact downwind nonattainment areas, i.e. western Michigan. DNR will be using the CAM-X and UAM-V models to develop its attainment demonstration. The modeling area will extend beyond the Lake Michigan area and will also include most of Tennessee, Wisconsin and Michigan; much of Ohio, Missouri and Iowa; and all of Kentucky, Illinois and Indiana. Lopez outlined some evaluation and modeling issues for the attainment demonstration. One assumption is that, given the underlying ("background") levels of ozone in Wisconsin's air, the state cannot meet the one-hour ozone standard without emission reductions from contributing areas. Wisconsin will need to adopt some additional rules to reduce emissions of volatile organic compounds from printing on plastic parts, cleanup solvents and possibly adhesives. In addition there need to be some new rules on Reasonably Available Control Technology to reduce nitrogen oxide emissions ("NOx RACT"); the DNR will convene a new workgroup to formulate the NOx RACT rules. There was discussion about the "NOx waiver" that Wisconsin received from EPA a few years ago, which exempted southeastern Wisconsin from certain emission reductions that were required elsewhere. Lopez said that, based on the existing scientific information at the time, the NOx waiver was valid when it was made; however, newer scientific developments indicate the NOx waiver will not help Wisconsin reach attainment of the ozone standard. In order to maintain some flexibility for the state, the DNR will keep its existing NOx SIP rule package as a backup in case the court case goes away, but will continue working on new regional NOx reduction agreements. The NOx controls envisioned by Wisconsin's NOx SIP would help Wisconsin's ozone situation regardless of whether the NOx SIP call stands or falls. Lopez said Wisconsin must resolve the NOx waiver issue and any regional agreement(s) must produce legitimate emission budgets that assure that the states can attain the one-hour ozone standard.

Each state in the regional negotiation will have its own process of involving stakeholders. Lopez showed overheads outlining the DNR's current schedule for the stakeholder process. If the state cannot obtain a regional agreement on emission reductions, it will submit a section 126 petition to EPA. DNR staff are working on NOx RACT rules on the possibility they will be needed; Kris McKinney said DNR needs to show stakeholders the department's analysis for doing these rules. Hank Handzel asked if stakeholders would be "engaged early and consistently" for their input in developing these rules; Lopez said DNR hopes to have at least 3 meetings on this issue before mid-February 2000, and Eagan said DNR has to have time to perform technical analyses as well as hold meetings. Tom Walker suggested the stakeholders are more likely to support the process and ultimate rules if DNR presents rationales for differing options. Pat Stevens said his association's stakeholders would like to provide input while it can still impact the process, before decisions are made. Tom Karman said the NOx RACT rules would affect approximately 100 industrial boilers as well as some blast furnaces, located primarily in the ozone nonattainment counties and some other counties whose emissions influence or contribute to the nonattainment problem. Lopez noted that it's important for the DNR to get consensus on the need to include sources that are outside the nonattainment area but which contribute to nonattainment problems. Lopez noted that if Wisconsin missed the deadline to submit the 2000 SIP update, EPA would start the sanctions clock toward imposing a federal implementation plan (FIP) on Wisconsin.

**Permits process review** – Eagan said DNR has an internal work group looking at how to streamline the processes for reviewing and issuing new source and operation permits; this group will report later to the Task Force.

**Other issues** – None raised.

**Next meeting date** – See page 1. Two meetings planned.